IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1129 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASHMIKANT MANGULAL MEHTA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR AD SHAH for Appellant(s) : 1,
MR LR PUJARI PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 03/09/2007

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and order of the learned

Special Judge, Ahmedabad (hereinafter referred to as 'trial Court') dated 1st September, 1993 passed in Special Case No.19 of 1991 whereby the trial Court convicted the appellant, herein, for the offence punishable under Section 7 of the Prevention of Corruption Act and sentenced to undergo Rigorous Imprisonment for a period of two years and to pay fine of Rs.500/- and in case of default to undergo further imprisonment for a period of three months. The trial Court also convicted the appellant for the offence punishable under Section 13(1)(d)(i) and (ii)of the Prevention of Corruption Act punishable under Section 13(2) of the said Act and sentenced to undergo Rigorous Imprisonment for a period of two years and to pay fine of Rs.500/- and in case of default to undergo further imprisonment for a period of three months whereas the other two co-accused were acquitted by the trial Court. The aforesaid sentences were ordered to run concurrently.

2.0 The brief facts giving rise to the

present appeal are that one Mr. Babulal Mohanlal Shah-original complainant-P.W.-1 who was residing at Kundan Apartments, Division-II of Vasna Area of Ahmedabad city, was having the problem of supply of water at his residence. Hence, P.W.-1 approached Office of the Ahmedabad Municipal Corporation (hereinafter referred to as 'Corporation') at Fatehpur Water Tank from where the water was supplied to the area in which his residence was situated and there he (P.W.-1), for the first time, met accused No. 1-the appellant, herein, and accused No.2 who were working with the Corporation in their capacity as Jr. Supervisor and Sr. Supervisor, respectively. The appellant and accused No.2 told P.W.-1 that they shall send accused No.3 who was working as fitter with the Corporation, at the residence of P.W.-1 and accused No.3 would do needful to solve the problem of supply of water at the residence of P.W.-1. At that time, the appellant and accused No. 2 told P.W.-1 that for the aforesaid work, P.W.-1 has to pay Rs.300/- to accused No.3.

2.1 Thereupon, accused No.3 visited residence of P.W.-1 and made necessary changes to solve the problem of supply of water. It is the say of P.W.-1 that, at the relevant point of time, he had paid Rs.300/- to accused No.3, as advised by the appellant and accused No. 2, for the aforesaid work. However, the problem of P.W.-1 was not solved.

2.2 P.W.-1, therefore, again approached the appellant and accused No.2 and showed his desire to have direct water connection at his residence. Therefore, P.W.-1 was advised by the appellant and accused No.-2 to have a fresh connection with meter. Hence, P.W.-1 approached the Usmanpura Zonal Office after obtaining form from Paldi Zonal Office. P.W.-1 completed all the necessary formalities i.e. filling up of form and payment of requisite charges and obtained permission from the Usmanpura Zonal Office for getting direct water connection at his residence with meter and then went to Paldi Zonal Office.

2.3 At Paldi Zonal Office P.W.-1 again met the appellant and gave him the form and Rs.100/- towards the connection charges, as against the normal charges of Rs.70/-, as advised by the appellant, since P.W.-1, desperately wanted to have the direct water connection. Thereupon, accused No.3 again visited the residence of P.W.-1 to connect it with direct water pipeline of the Corporation with meter. However, even after obtaining direct water connection with meter, problem of P.W.-1 was not solved.

2.4 P.W.-1, hence, again approached the appellant and accused No.2 and told them that though he has done all the needful, as advised by the appellant and accused No.2, his problem of supply of water was not solved. The appellant and accused No.2, therefore, assured P.W.-1 that they shall visit his residence and accordingly they visited the residence of P.W.-1 and found that the water was not coming. Hence, they advised P.W.-1 to obtain direct water connection from the main pipeline from the road. At that time, the

appellant and accused No.2 told P.W.-1 that for having such connection, P.W.-1 has to bear some extra expenses. Since, P.W.-1 was badly in need of water connection, he agreed to the advise given by the appellant and accused No.2. Thereupon, P.W.-1 completed all the necessary formalities and got permission to have direct water connection from the main pipeline from the road. It is only then the problem of supply of water of P.W.-1 was solved.

2.5 It was the case of the prosecution before the trial Court that in pursuance of grant of permission for direct water connection from the main pipeline from the road at the residence of P.W.-1, the accused persons started demanding an amount of Rs.300/- towards the aforesaid work from P.W.-1. However, since P.W.-1 had obtained the water connection from the main pipeline from the road after facing great difficulties and after paying regular charges as well as extra money by way of illegal gratifications to the accused persons, he was not willing to pay any

further money to them. But, with a view to see that the supply of water to his residence did not get affected in any way by the accused persons, P.W.-1 told the accused persons that he shall pay the amount of Rs.300/- later. Thereafter, the accused persons continued to demand Rs.300/- from P.W.-1. The appellant visited the residence as well as place of business of P.W.-1 several times for collecting Rs.300/- for the work of water connection. Hence, being aggrieved with the same, P.W.1 decided to approach Anti Corruption Bureau, Ahmedabad with a view to lodge a complaint against the accused persons.

2.6 Accordingly, on 24.07.1990, P.W.-1 approached Anti Corruption Bureau, Ahmedabad and lodged a complaint under the Prevention of Corruption Act against the accused persons. After the recording of the complaint of P.W.-1 on 24.07.1990, a trap was arranged for 25.07.1990. On 25.07.1990, Mr. Virsinhbhai Kalubhai Ambaliyar- Investigating Officer-P.W.-3, herein, summoned panchas. On arrival of panchas, P.W.-1

and the panchas were introduced to one another. In pursuance of that P.W.-1 narrated the facts of the complaint in brief and the complaint given by P.W.-1 was read over to the panchas and then panchas signed it. P.W.-1, thereafter, produced three currency notes of Rs.100/- each. The said currency notes were given to one Mr. Ramkrishna Mulsinh Pawar, Police Constable for experiment of ultra violet light and anthracene powder.

2.7 Mr. Pawar, thereafter, showed the said currency notes to P.W.-1 and Panchas in normal light as well as in ultra violet light but nothing significant appeared. Mr. Pawar, thereafter, with the help of a paper smeared the aforesaid currency notes with anthracene powder and exposed it to normal light as well as to the ultra violet light. When the said currency notes were exposed to the normal light nothing significant appeared, but, when the same were exposed to ultra violet light, dots of white-blue colour appeared on the said currency notes. Then, the similar experiment was carried out on the

hands of Mr. Pawar. When the hands of Mr. Pawar were exposed to the normal light nothing significant appeared, but when the same were exposed to the ultraviolet light, dots of white-blue colour appeared on the hands of Mr. Pawar. The said paper was, thereafter, burnt and the bottle of anthracene was kept back in the cupboard. In pursuance of that Mr. Pawar, searched P.W.-1 and an amount of Rs.11.25/- was found in the pocket of P.W.-1 which was kept as it is. Thereafter, P.W.-1 was given the currency notes of Rs.300/- treated with anthracene powder and was instructed not to touch the said amount until the same were demanded by the appellant. Thereupon, a preliminary 'Panchnama' was carried out to the aforesaid effect. Then, P.W.-1 and the panchas were given necessary instructions by P.W.-3. P.W.-2 was instructed by P.W.-3 to accompany P.W.-1 and to witness the transaction that may take place between P.W.-1 and the appellant. Thereafter, raiding party along with P.W.-1 and panchas, left for the residence of P.W.-1. On reaching the residence of P.W.-1, as

per the arrangement, everybody took their position. However, as it was raining heavily on that day i.e. on 25.07.1990, none of the accused persons turned up to collect the amount. Hence, the raid was called off and a Panchnama to the said effect was carried out. P.W.-3, thereafter, told P.W.-1 that he would keep the amount of Rs.300/- treated with anthracene powder with him and told P.W.-1 to inform him as and when the accused persons approached P.W.-1 for the money so that the raid could be arranged at that time. But, on account of heavy rain during the whole day on 25.07.1990, none of the accused persons turned up to collect the amount.

2.8 However, on the next day i.e., on 26.07.1990, the appellant went to the place of business of P.W.-1 and demanded money. P.W.-1, hence, paid an amount of Rs.150/- to the appellant, after secretly noting down the numbers of the said currency notes. The appellant, then, told P.W.-1 to come to his office next day and to pay him remaining Rs.150/- and P.W.1 assured the

appellant that he shall come.

2.9 Thereupon, on 26.07.1990, P.W.-1 again approached Office of the A.C.B., Ahmedabad and informed P.W.-3 about the aforesaid incident. P.W.-3, therefore, arranged for a trap on 27.07.1990. Before setting off for the raid on 27.07.1990, all the statutory procedures required for carrying out a raid i.e. experiment of normal light and ultraviolet light and anthracene powder, preparation of preliminary 'Panchnama etc., were completed. Thereupon, the raiding party left for office of the appellant at Fatehpura Water Tank.

2.10 On reaching Fatehpura Water Tank, the members of the raiding party took their position as per the arrangement and P.W.-2 accompanied P.W.-1, as per the instructions of P.W.-3. Then P.W.-1 and P.W.-2 went into the office of the appellant and as soon as they entered, the appellant called the P.W.-1 by name. P.W.-1, then, asked the appellant as to what happened to

his water connection, at that time the appellant told P.W.-1 to give him the form and assured P.W.-1 that he shall get the work done and when P.W.-1 replied that the form was not signed and tend to stand up, the appellant gave signal for money to P.W.-1, hence, P.W.-1 produced the currency notes of Rs.100/- and Rs.50/- each treated with anthracene powder and gave it to the appellant and the appellant accepted the same and put it in the pocket of his shirt. Then, as per the arrangement, signal was given to the raiding party and the raiding party immediately rushed to the spot.

2.11 In pursuance of that the Investigating Officer-P.W.-3, gave his introduction to the appellant. Then, P.W.-2 narrated the transaction which had taken place between P.W.-1 and the appellant and the same was recorded by way of 'Panchnama'. Thereafter, on instructions of P.W.-3, P.W.-2 took out two bundles of currency notes of Rs.150/- each, from the left hand side pocket of the shirt of the appellant. Each pair

contained one currency note of Rs.100/- and one currency note of Rs.50/-. The currency notes recovered from the pocket of the shirt of the appellant were, then, counted and its numbers were tallied with the numbers already noted down in the preliminary Panchnama and they were found to be matching.

2.12 In pursuance of that the hands of the raiding party were exposed to the normal light as well as to the ultra violet light, but, nothing significant appeared. Thereafter, the hands of P.W.-1, P.W.-2 and the appellant were exposed to the normal light as well as to the ultra violet light. When the hands of P.W.-1, P.W.-2 and the appellant were exposed to the normal light nothing significant appeared, but, when their hands were exposed to the ultra violet light, dots of white-blue colour appeared on their hands. Similar experiment was also carried out on the shirt worn by the appellant and when the said shirt was produced under the normal light nothing significant appeared and when the same was

exposed to the ultraviolet light, the dots of white-blue colour appeared thereon. Thereafter, the 'Muddamal' recovered from the appellant, including the shirt worn by the appellant, was attached and a Panchnama was drawn to the aforesaid effect.

2.13 Thereupon, offence was registered against the accused persons under the Prevention of Corruption Act. After the completion of investigation and after obtaining sanction, charge-sheet was submitted against the appellant as well as accused Nos. 2 and 3 before the trial Court. The trial Court framed, read over and explained charges under Section 7, 13(1)(d)(i) and (ii) and Section 13(2)of the Prevention of Corruption Act to the appellant and the accused Nos.2 and 3. However, they did not plead guilty to the charges and claimed to be tried. Then the trial Court heard all the parties and convicted and sentenced the appellant as stated in Para-1 of the judgment and acquitted accused Nos. 2 and 3. Hence, the present appeal.

3.0 Mr. Shah, learned Advocate for the appellant has submitted that the trial Court ought to have held that the amount of Rs.300/- received by the appellant, in two installments of Rs.150/- each, on 26.07.1990 and on 27.07.1990 was towards the payment of supply of meter and was not an illegal gratification.

3.1 Learned Advocate, in support of his case, has placed reliance on a decision of the Hon'ble Apex Court in the case of ***"T. Subramaniam Vs. The State of Tamil Nadu"*** reported in JT 2006(1)SC 101 wherein it was held that mere receipt of money is not sufficient to fasten guilt under Section 5(1)(a) or 5(1)(d)in the absence of any evidence of demand and acceptance of the amount as illegal gratification and if the reason for receiving the money is explained and the explanation is probable and reasonable, then the person has to be acquitted.

3.2 Learned Advocate has further submitted

that, though, the work of transfer of connection was done on 07.06.1990 and new connection for water supply from main pipeline from the road was given on 16.06.1990, there were no demands for bribe during the period from 18.06.1990 to 23.06.1990. The said aspect has not been taken into consideration by the trial Court.

3.3 Learned Advocate has submitted that the trial Court has committed an error by not taking into consideration the fact that the P.W.-1 was in the habit of filing false complaints of similar nature against the public servants and that in connection with the earlier complaint filed by the P.W.-1, all the accused were released by the trial Court.

3.4 Learned Advocate has further submitted that even as per the version given by P.W.-1-himself, on the day of alleged incident, when P.W.-1 inquired from the appellant as to what happened to his water connection, the appellant told P.W.-1 to give him the form and assured him

(P.W.-1) that he (the appellant) shall get the work done and when the complainant replied that the form was not signed and tend to stand up, the appellant gave signal to P.W.-1 for money, and hence, the complainant took out the amount of Rs.150/- from his pocket and gave it to the accused and accused in turn took the same and put it in his pocket, and hence, the trial Court ought to have held that, admittedly, there was no demand of money by the appellant. The said aspect has not been taken into consideration by the trial Court.

3.5 In support of his case, learned Advocate has placed reliance on a decision of the Hon'ble Supreme Court in the case of ***"Subash Parbat Sonvane Vs. State of Gujarat"*** reported in 2002 SCC (Cri)954. In that case, when the complainant went to Police Station and approached accused, accused told the complainant as to why the complainant had come to Police Station at that time. To that the complainant replied that he had been waiting for the accused for about one

hour since he had come with a witness who is required to be examined. However, as writer was not present, accused told the complainant to come in the evening and, thereafter, accused started proceeding towards toilet. At that time, the complainant went after accused and took out something from his pocket and gave that thing to accused, accused took the same and put in his pocket.

3.6 In that case, accused was convicted and sentenced for the aforesaid offence punishable under Sections 7 as well as Section 13(1)(d) and 13(2) of the Prevention of Corruption Act by the trial Court and the same was confirmed by the High Court. Being aggrieved with the said orders, accused moved Hon'ble Supreme Court. The Hon'ble Apex Court, confirmed the conviction of the accused under Section 7 of the Prevention of Corruption Act and set aside the conviction of accused under Section 13(1)(d) on the ground that merely on the basis of the fact that the complainant took out something from his pocket

and gave it to the accused and accused in turn took the same and put in his pocket, it cannot be inferred that the accused had demanded and accepted anything from the complainant as illegal gratification.

4.0 On the other hand, Mr. Pujari, learned APP has supported the case of the prosecution and has stated that after taking into consideration all the facts and circumstances of the case and the documents placed on record, the trial Court has passed the order of conviction, and hence, no interference is called for by this Court.

5.0 Heard, Mr. Shah, learned Advocate for the appellant and Mr. Pujari, learned APP on behalf of respondent-State. In the case on hand, since the appellant has admitted the fact that he had received amount of Rs.300/- from P.W.-1, in two installments of Rs.150/- each, on 26.07.1990 and on 27.07.1990, the only question which requires consideration by this Court is as to whether the amount of Rs.300/- received by the appellant from

P.W.-1 was illegal gratification or not. The prosecution, in support of its case, has examined three witnesses and has placed reliance on the complaint-Exhibit-24, Seizure Memo-Exhibit-21 and the Panchnama-Exhibit-22.

5.1 It was the case of the appellant before the trial Court that the amount of Rs.300/- received by him from P.W.-1, in two installments of Rs.150/- each, on 26.07.1990 as well as on 27.07.1990, was towards outstanding payment of meter which was supplied by one Shailesh Rambhai-D.W.-2 to P.W.-1 at the instance of the appellant. In that view of the matter, here, it would be relevant to refer to Exhibit-29 wherein the duties of Supervisor(s) and Sr. Supervisor(s) of Water Department are mentioned, which reads as under,

> " Duties of Supervisor(s)/Sr. Supervisor(s) of Water Department:
>
> On receipt of routine complaints from their Superior Officers, general public or Councilors in written or orally(i.e. through telephone) regarding

> leakage of water, insufficient pressure of water in residential areas, construction of taps with meter or to give new connection or to transfer the old one or for setting up of new public taps, they shall distribute the work among the fitters and labourers and supervise the same. Apart from that they shall mark attendance of staff members of different stores, fill indent form for obtaining material for day to day work, collect such material and send at the place of work, keep account of such material, make payment as per musters and keep account of leaves. They also help their Superior Officers in the matter of grant of new water connections or transfer of old ones by visiting and collecting information about such places, by examining numbers of existing connections, pressure of water etc. at such places, prior to obtaining sanction in regard to such works."

5.2 Hence, from the above it clearly transpires that the appellant was neither empowered nor was duty-bound to direct D.W.-2 to supply motor to P.W.-1 and to collect the outstanding amount towards supply of meter from P.W.-1, directly. Here, it may be noted that P.W.-1, in his deposition, has clearly stated that he had already paid the amount of Rs.300/- towards the payment of supply of meter, and hence, there was no question of payment of any

amount towards the supply of meter and the same remains un-controverted. Moreover, from the evidence of P.W.-2 also it transpires that when the appellant received amount of Rs.150/- from P.W.-1 on 27.07.1990, there was neither any conversation between the appellant and P.W.-1 about any outstanding payment towards supply of any meter nor the appellant said anything to the effect that he was accepting the said amount towards the outstanding payment of supply of meter. Here, it may also be noted that the contention raised by the learned Advocate for the appellant that the amount of Rs.300/-, received by the appellant, in two installments of Rs.150/- each, on 26.07.1990 and on 27.07.1990 was towards the outstanding payment of meter, was raised for the first time at the time of trial only and prior to that, at no point time, the appellant took defence that he had accepted the amount of Rs.300/- towards outstanding payment of supply of any meter which clearly suggests that the same is nothing but an afterthought. Apart from that the fact admitted by the appellant-himself that he

had received an amount of Rs.300/-, in two installments of Rs.150/- each, from P.W.-1 on 26.07.1990 and on 27.07.1990, and recovery of the said amount treated with anthracene powder from the pocket of the shirt of the appellant, also supports the case of the prosecution that after receiving amount of Rs.150/- on 26.07.1990, the appellant instructed P.W.-1 to come to his office on 27.07.1990 to pay the remaining Rs.150/- and accordingly P.W.-1 went to the office of the appellant, the appellant gave signal for money, P.W.-1 offered the money and the appellant was caught red-handed and when the numbers of the currency notes recovered from the pocket of the shirt of the appellant were tallied with the numbers already noted in the 'Panchnama', they were found to be matching. Hence, the said fact points out that the amount of Rs.300/- received by the appellant, in two installments of Rs.150/- each, on 26.07.1990 and on 27.07.1990, was not towards the outstanding payment of supply of meter, as is claimed by the appellant.

5.3 P.W.-1 in his deposition-Exhibit-11 has stated that since there was problem of supply of water at his residence, he had approached officials of the Corporation at Fatehpura Water Tank from where the water was supplied to the area in which his residence was situated and at that time he had met the accused persons for the first time. P.W.-1 further states that the appellant and accused No.2 told him that they shall send the accused No.3 at his (P.W.-1's)residence and he (accused No.3) would do needful to solve his(P.W.-1's) problem of supply of water. They also told P.W.-1 to pay an amount of Rs.300/- to accused No.3 for the aforesaid work. P.W.-1 states that, accordingly, accused No.3 visited his residence and made necessary changes to improve the supply of water at his residence and for the said work he(P.W.-1) had paid Rs.300/- to the accused No.3, as advised by the appellant and accused No.2. P.W.-1 further states that, even after that, since there was no supply of water, he again approached the appellant and accused No.2 and showed his desire

to have direct water connection. In reply to that the appellant and accused No.2 told P.W.-1 that he(P.W.-1) can have direct water connection with meter, to which P.W.-1 agreed. Thereafter, P.W.-1 was given a form by the accused persons. P.W.-1, then, went to Usmanpura Zonal Office and gave the said form, after attaching certificate of 'Property Tax' and the same was sanctioned by the Usmanpura Zonal Office. P.W.-1 then again went to Paldi Zonal Office and gave the aforesaid form to the appellant and the appellant told the P.W.-1 that he(P.W.-1) had to pay Rs.70/- towards connection charges. P.W.-1 further states that he, therefore, gave Rs.100/- to the appellant towards connection charges, as against the normal charge of Rs.70/-, since he desperately wanted to have direct supply of water at his residence. However, even after that nothing happened for two-three days, hence, P.W.-1 again went to Fatehpura Tank Office and informed the appellant and accused No.2 about the aforesaid fact. The appellant and accused No.2, hence, assured P.W.-1 that they would send accused No.3 to his

residence. Thereafter, accused No.3 visited the residence of P.W.-1 and done the work of direct water connection with meter. However, even then the problem of the P.W.-1 was not solved. P.W.-1, hence, once again went to Fatehpura Tank and complained about the same to the appellant that even after obtaining connection with meter there was no supply of water. The appellant, therefore, told P.W.-1 that they shall visit his(P.W-1's) residence. Accordingly, the accused persons visited the residence of P.W.-1 and after examination since they found that the water was not coming, they advised P.W.-1 to obtain direct water connection from the main pipeline from the road. The accused persons also told P.W.-1 that for having such connection he has to bear some extra expenses. Thereupon, P.W.-1 applied for the direct water connection from the main pipeline from the road. After two days of the said application, P.W.-1 again went to Fatehpura Water Tank to enquire about his application and there he met the appellant and the appellant told him (P.W.-1) that his application was sanctioned

and the appellant assured P.W.-1 that he would send the accused No.3 at his residence for the aforesaid work. Thereupon, accused No.3 came to the residence of P.W.-1 and gave connection from the main pipeline from the road and it was only then the problem of supply of water at the residence of P.W.-1 was improved to some extent.

5.4 P.W.-1 has further stated that, thereafter, on the next day the appellant along with one bearded person visited his residence and told him to pay Rs.300/- since his(P.W.-1's) problem of supply of water was solved. P.W.-1 states that since he had already paid extra money, apart from the legal charges, by way of illegal gratification to the accused persons for supply of water at his residence, he was not willing to pay any further money to the accused person. However, with a view to see that the supply of water at his residence did not get affected in any way by the accused persons, he (P.W.-1) told them that he shall pay the same later. However, the demand for Rs.300/- from the

accused persons continued and the appellant kept visiting residence and the place of business of P.W.-1 for collecting the aforesaid amount.

5.5 P.W.-1 states that being aggrieved with the same he approached Anti Corruption Bureau, Ahmedabad on 24.07.1990 and lodged a complaint against the accused persons. Accordingly, a trap was arranged on 25.07.1990. On 25.07.1990 after completing all the statutory procedures required for setting up a 'trap' i.e. experiment of normal light and ultraviolet light as well as anthracene powder and preparation of preliminary 'Panchnama etc., the raiding party along with P.W.-1 and panch witnesses went to the residence of P.W.-1 and waited for the accused persons. But, since it was raining very heavily on that day i.e. 25.07.1990, none of the accused persons turned up to collect the amount, and hence, the 'trap' was canceled after drawing a Panchnama to that effect. However, on the next day i.e. on 26.07.1990, the appellant approached P.W.-1 at his place of business and demanded the amount of

Rs.300/-. P.W.-1, hence, gave Rs.150/- to the appellant, after secretly noting down the numbers of the said currency notes, and assured the appellant that as per his (the appellant's) instructions, he(P.W.-1) shall come to the office of the appellant next day i.e. on 27.07.1990 and shall pay the remaining Rs.150/-. P.W.-1 states that, thereafter, he again contacted P.W.-3 at A.C.B., Ahmedabad on 26.07.1990 and a trap was arranged for 27.07.1990.

5.6 P.W.-1 further states that on 27.07.1990, after following all the statutory procedures required for carrying out a 'raid', raiding party left for the office of the appellant. On reaching Fatehpura Water Tank, the members of the raiding party took their position and P.W.-1 along with P.W.-2 went towards office of the accused persons and as soon as they entered into the office, the appellant called P.W.-1 by his name and when P.W.-1 asked the appellant as to what happened to his water connection, the appellant told P.W.-1 that you give me the form and I shall get the

work done. In reply to that P.W.-1 told the appellant that the form was not signed and as he tend to stand up, the appellant gave signal to P.W.-1 to give money, and hence, P.W.-1 took out two currency notes of Rs.100/- and Rs.50/- each, treated with anthracene powder and gave it to the appellant, the appellant accepted the same and put it in the pocket of his shirt. Then, as per the arrangement, signal was given to the raiding party and the appellant was caught red-handed.

5.7 Hence, from the deposition of the P.W.-1 it clearly transpires that on each and every occasion P.W.-1 had followed due procedure of law i.e. filling up of necessary forms, payment of requisite fees etc., to solve problem of supply of water at his residence. Moreover, P.W.-1 had also paid some extra money by way of illegal gratification to the accused persons to get his work done and no where it transpires that he (P.W.-1) had ever asked the appellant or other accused persons to do him some favour illegally. From the above, it also transpires that P.W.-1

had never asked the appellant to direct D.W.-2 to supply meter to him(P.W.-1). The version given by P.W.-1 in his deposition as well as in his cross-examination remains un-controverted.

5.8 Apart from that, deposition of Khatuji Sinaji Asoda- Panch No.1-P.W.-2 i.e. Exhibit-19, herein, also supports the case of P.W.-1 wherein P.W.-2 has stated that on the day of alleged offence he was accompanying P.W.-1, as per the instructions of P.W.-3-Mr. Ambaliyar, and when at about 3:00 p.m. he along with P.W.-1 entered into the office of the appellant, the appellant called P.W.-1 by name and when P.W.-1 asked the appellant as to what happened to his water connection, the appellant told P.W.-1 to give the form to him and assured him (P.W.-1) that he shall get the work done. In reply to that P.W.-1 told the appellant that the form was not signed and as he tend to stand up, the appellant gave signal to P.W.-1 to give money. Hence, P.W.-1 took out two currency notes of Rs.100/- and Rs.50/- each, treated with anthracene powder and

gave it to the appellant, the appellant accepted the same and put it in the pocket of his shirt. Then signal was given to the raiding party and the appellant was caught red-handed. Hence, from the deposition of P.W.-2 also it clearly transpires that, at the relevant point of time i.e. 27.07.1990, when P.W.-1 offered the amount of Rs.150/- to the appellant, on receiving signal from the appellant, there was neither any conversation about any outstanding amount towards the supply of any meter took place between P.W.-1 and the appellant nor the appellant said anything to the effect that he was accepting the said amount towards the outstanding payment of meter on behalf of D.W.-2.

5.9 Hence, from the evidence of P.W.-1 and P.W.-2 it becomes clear that the appellant demanded and accepted amount of Rs.300/- from P.W.-1, in two installments of Rs.150/- each, on 26.07.1990 and on 27.07.1990, for doing the work of improving condition of supply of water at the residence of P.W.-1 which was illegal

gratification and was not towards the outstanding amount for supplying of any meter as is claimed by the appellant.

5.10 In a case where the evidence is overwhelming and convincing and the panch witnesses inspire confidence and on appreciation of the evidence, it clearly appear that the panch was an independent and reliable person, there is no reason to discard the evidence of panch on the ground that it requires independent corroboration. In the case on hand, the evidence of P.W.-1 is supported by the complaint- Exhibit-24 and Panchnama- Exhibit-22 as well as by evidence of P.W.-2 who is an independent witness. From the evidence of P.W.-2 it clearly transpires that when P.W.-1 offered the amount of Rs.150/- to the appellant on 27.07.1990, on receiving signal from the appellant, there was neither any conversation about any outstanding amount towards supply of any meter took place between P.W.-1 and the appellant nor the appellant said anything to the effect that he was accepting the said amount

towards the outstanding payment of supply of meter on behalf of D.W.-2. Hence, from the evidence of both P.W.-1 and 2 as well as from the complaint- Exhibit-24 and the Panchnama- Exhibit-22, the ingredients of bribe i.e. the demand, offer and acceptance are proved beyond doubt by the prosecution. The evidence of P.W.-2 are natural and trustworthy, and hence, there is no reason to discard the same.

5.11 Since the evidence discussed hereinabove are found to be sufficient in deciding the Appeal, I am not discussing the depositions of other witnesses, as they are not of much relevance.

5.12 As regards the contention raised by the learned Advocate for the applicant that the amount of Rs.300/- received by the appellant was towards outstanding payment of meter and was not an illegal gratification is concerned, here it would be relevant to refer to a decision of the Hon'ble Apex Court in the case of ***“Biranchi***

Narayan Mohanty Vs. State of Orissa” reported in (2001)9 SCC 288. In that case, the accused-appellant was caught red-handed in a trap while accepting an amount of Rs.48/- from P.W.-11. The appellant-accused put forward a defence that the said amount of Rs.48/- received by him from P.W.-11 was entrusted by D.W.-1 with instruction to hand it over to him i.e. the appellant-accused for purchase of mustard oil. However, taking into consideration facts and circumstances of the case and the clear and convincing evidence produced by the prosecution, the Apex Court did not accept the defence put forward by the appellant-accused and convicted him.

5.13 In the case on hand also, from the evidence produced on record and from the evidence of P.W.-1 and P.W.-2 it clearly transpires that while accepting the amount of Rs.150/- from P.W.-1 on 27.07.1990, in the presence of P.W.-2, there was no conversation took place between the appellant and P.W.-1 to the effect that the appellant was accepting the said amount towards

outstanding payment of meter which was allegedly supplied by D.W.-2 to P.W.-1 at the instance of appellant. Apart from that from Exhibit-29 showing the duties of Supervisor(S)/Sr. Supervisor(s) it clearly transpires that the appellant was neither empowered nor was duty-bound to direct D.W.-2 to supply motor to P.W.-1 and to collect the outstanding amount towards the same from P.W.-1, directly. Even otherwise in view of the fact that the said contention was raised for the first at the time of trial only and prior to that, at no point time, the appellant took defence that he had accepted the amount of Rs.300/- towards outstanding payment of alleged supply of meter, clearly suggests that the same is nothing but an afterthought. Hence, the said contention requires to be rejected and the decision of the Hon'ble Apex Court in the case of ***"T. Subramaniam "***(Supra) relied on by the learned Advocate for the appellant shall not apply to the facts of the case on hand.

5.14 As regards the contention raised by the

learned Advocate for the appellant that there were no demands during the period from 18.06.1990 to 23.06.1990 is concerned, from the deposition of P.W.-1 it clearly transpires that on the very next day of obtaining direct water connection from the main pipeline from the road i.e. on 17.06.1990, the appellant along with one bearded person visited the residence of P.W.-1 and demanded Rs.300/- for the aforesaid work. Moreover, accused No.2 also visited the residence of P.W.1, on the very same day, for collecting amount of Rs.300/- from P.W.-1. It is pertinent to note that, thereafter, the appellant constantly kept visiting residence as well as the place of business of P.W.-1 for collecting Rs.300/-, till he (the appellant) was caught red-handed by A.C.B., Ahmedabad on 27.07.1990 while accepting the second installment of Rs.150/-. The appellant-himself has admitted the fact of having received amount of Rs.300/- from P.W.-1, in two installments of Rs.150/- each, on 26.07.1990 as well as on 27.07.1990. Hence, it becomes clear that even prior to lodging of the complaint on

24.06.1990 by P.W.-1, the appellant had been demanding Rs.300/- from P.W.-1. The said contention, therefore, requires to be rejected.

5.15 As regards the contention raised by the learned Advocate for the appellant that P.W.-1 was in the habit of filing complaints of similar nature against the public servants is concerned, it is well settled principle of law that while entertaining a complaint filed by the complainant, to form an opinion about the bona-fides of the complainant for filing a complaint, the Court is not required to look into the aspect whether the complainant had earlier filed any complaint of similar nature or not and as to whether he(the complainant) succeeded in the said complaint or not. In the case on hand, the admission of the appellant of having received amount of Rs.300/-, in two installments of Rs.150/- each, from P.W.-1 on 26.07.1990 and on 27.07.1990 as well as depositions of P.W.-1, P.W.-2, P.W.-3 and the documents produced on record supports the case of P.W.-1 that the

appellant was demanding an amount of Rs.300/- from him (P.W.-1) and was caught red handed while accepting the same, and hence, the said contention also requires to be rejected.

5.16 As regards the contention raised by the learned Advocate for the appellant that there was no demand of money by the appellant on 27.07.1990 is concerned, it would be relevant to refer to a decision of the Apex Court in the case of ***"State of Andhra Pradesh Vs. R. Jeevaratnam"*** reported in 2005 AIR SCW 3132. In that case, accused demanded bribe for clearing file of tender of complainant and repeatedly made demands. The complainant, therefore, called the accused in a hotel to receive the amount of bribe. When the accused entered into the hotel room, he enquired whether the complainant has brought the amount or not. The complainant offered the money and the same were accepted by the accused. On receipt of the amount, the accused gave assurance that the file of the complainant would be cleared. At that time, the accused was caught red-handed. The

Hon'ble Apex Court held that the assurance given by the accused, on receipt of the money, to the complainant that the file of tender shall be cleared, clearly establishes that the amount received by the accused was bribe.

5.17 In the case on hand, from the evidence produced on record it clearly transpires that on 27.07.1990 when P.W.-1 along with P.W.-2 entered in to the office of the appellant, the appellant called P.W.-1 by name and when P.W.-1 asked as to what happened to his connection of water, the appellant told P.W.-1 to give form to him (the appellant) and assured P.W-1 that his work shall be done and thereafter gave signal to P.W-1 to give money, and hence, P.W-1 took out two currency notes of Rs.100/- and Rs.50/- each, treated with anthracene powder from his pocket and gave it to the appellant which was accepted by the appellant and while accepting the same the appellant was caught red-handed. The appellant-himself has admitted the fact of having received amount of Rs.300/- from P.W.-1 in two

installments of Rs.150/- each, on 26.07.1990 and on 27.07.1990 and the same is supported by the evidence of P.W-1, P.W.-2 and the other doucments produced on record. Hence, while asking P.W.-1 to hand over the form to him (the appellant), the assurance given by the appellant that the work of P.W.-1 shall be done, clearly suggests that the amount of Rs.150/- received by the appellant was illegal gratification and was not towards the outstanding amount of supply of any meter, as is claimed by the appellant. Hence, the said contention also requires to be rejected and the decision of the Hon'ble Apex Court relied on by the learned Advocate for the appellant in the case of ***"Subash Parbat Sonvane"***(Supra) shall not come to the rescue of the appellant.

5.18 In view of the above discussion and taking into consideration the facts and circumstances of the case and the evidence available on record, I have no hesitation in holding that the amount of Rs.300/- received by the appellant from P.W.-1, in two installments of

Rs.150/- each, on 26.07.1990 and on 27.07.1990 was illegal gratification and that the ingredients of bribe i.e. demand, offer and acceptance has been successfully established by the prosecution beyond doubt. I am, therefore, in complete agreement with the reasoning given and the findings arrived at by the trial Court and find no reason to interfere with the same.

6.0 In the result, the appeal stands dismissed. The judgment and order of the learned Special Judge, Ahmedabad dated 1st September, 1993 passed in Special Case No.19 of 1991 stands confirmed. The bail bonds of the appellant stand canceled. The appellant shall surrender before the Jail / competent Authority within a period of **SIX WEEKS** from the date of receipt of the writ of this judgment.

(M.D. Shah,J.)

Umesh/